



**Written Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) in respect of an application under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”) and Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)**

**The Property: 60 Mungo Park, The Murray, East Kilbride G75 0AJ**

**Chamber Ref: FTS/HPC/EV/22/0437**

**Parties:**

**Mr. Graeme Lynn, residing at 10, Raymond Place, Westwood, East Kilbride G75 8LD (“the Applicant”)**

**Miss Lauren O'Neill residing previously at 60 Mungo Park, The Murray, East Kilbride G75 0AJ and now at 49 Main Street, East Kilbride, G74 4LN (“the Respondent”)**

**Tribunal Members:**

**Karen Moore (Legal Member) and Frances Wood (Ordinary Housing Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Application be refused and granted no Order as the tenancy terminated on 18 January 2022 by operation of Sections 48 and 49 of the Act.**

**Background**

1. By application received between 14 February 2022 and 27 March 2022 (“the Application”), the Applicant applied to the Tribunal for an Order for eviction and possession of the Property based on the Ground that a member of the Applicant’s family intends to reside in the Property.
2. The Application comprised:-
  - a copy of the private residential tenancy agreement between the parties;
  - copy Notice to Leave in terms of Ground 5 of Schedule 3 to the Act dated 1 November 2021 stating that the end of the notice period is 28 February 2022;
  - copy email dated 3 November 2021 sending the Notice to Leave to the Respondent;

email dated 17 December 2021 from the Respondent giving notice to terminate the tenancy on 18 January 2022 and email from the Applicant dated 21 December 2021 accepting the termination notice;  
copy Notice under Section 11 of the Homelessness Etc (Scotland) Act 2003 to South Lanarkshire Council, being the relevant local authority;  
copy email correspondence between the Parties regarding the keys to the property and  
copy tenancy reference provided by the Applicant for the Respondent in respect of a new tenancy she intended to enter into.

3. The Application was accepted by the Tribunal with the caveat that it appeared that, the Applicant having accepted the Respondent's notice to terminate the tenancy, the Application might not succeed, and, that the Applicant should consider withdrawing the Application. The Applicant maintained that the tenancy continued as the Respondent had failed to return the keys to the Property and had failed to remove all of her belongings from the Property.
4. A Case Management Discussion (the "CMD") was fixed for 1 June 2022 at 14.00 by telephone conference.

#### **CMD**

5. The CMD took place on 1 June 2022 at 14.00 by telephone conference. The Applicant took part and was not represented. The Respondent did not take part.
6. The Tribunal explained that the purpose of the CMD was to determine if the Application was competent, to identify the issues between the Parties, to determine if the Ground for the Order is satisfied and to determine if it is reasonable to grant the Order.
7. With regard to the Respondent's termination of the tenancy in terms of the Act, the Tribunal explained that Section 48(1) of the Act states *that "A tenant may bring to an end a tenancy which is a private residential tenancy by giving the landlord a notice which fulfils the requirements described in section 49"* and Section 48(2) of the Act states *"A tenancy comes to an end in accordance with subsection (1) on the day on which the notice states (in whatever terms) that it is to come to an end"*. Section 49 of the Act states that *"A notice fulfils the requirements referred to in section 48(1) if it is given (i) freely and without coercion of any kind, (ii) after the tenant begins occupying the let property (b) it is in writing, and (c) it states as the day on which the tenancy is to end a day that is after the last day of the minimum notice period."* "The minimum notice period" means a period which *(a) begins on the day the notice is received by the landlord, and (b) ends on the day falling (i) such number of days after it begins as the landlord and tenant have validly agreed between them, or (ii) if there is no such valid agreement, 28 days after it begins."*

8. In this case, the Respondent's notice to terminate the tenancy agreement complies with the tenancy agreement and the Act. The notice was accepted by the Applicant and the Respondent followed it through by vacating the Property.
9. With regard to the Applicant's Notice to Leave, Section 50 (1) of the Act states that "*A tenancy which is a private residential tenancy comes to an end if (a) the tenant has received a notice to leave from the landlord, and (b) the tenant has ceased to occupy the let property.*" Section 50(2) states "*A tenancy comes to an end under subsection (1) on the later of (a) the day specified in the notice to leave in accordance with section 62(1)(b), or (b) the day on which the tenant ceases to occupy the let property*" and Section 50(3) states that "*For the avoidance of doubt, a tenancy which is to come to an end under subsection (1) may be brought to an end earlier in accordance with section 48.*".
10. Therefore, even if the Respondent's notice did not properly end the tenancy, the fact that the Respondent complied with the Notice to Leave ended the tenancy on 18 January 2022.
11. None of the sections of the Act requires keys to be returned or all of the tenant's goods to be removed from the property. The Act requires the tenant to remove and to cease to occupy the Property.
12. The Applicant agreed that the Respondent has ceased to reside in the Property and that she now resides at another address in East Kilbride.
13. The Tribunal advised the Applicant that in its view there was no need to grant a possession order as the tenancy had been lawfully terminated.
14. The Tribunal referred the Applicant to Clauses 73- 74 of the tenancy agreement which covers the situation where the tenant leaves goods in the Property. In terms of those clauses, the Applicant is entitled to treat the goods and belongings left by the Respondent in the Property as having been abandoned by her, and on fourteen days written notice to her, is entitled to remove, store or dispose of any such items.
15. With regard to the Ground in the Notice to Leave, as the Tribunal held that the tenancy had been lawfully terminated, it did not have to reach a determination in respect of the Ground being established.

### **Findings in Fact**

1. From the Application and the CMD, the Tribunal made the following findings in fact:
  - i) There was a tenancy of the Property between the Parties at a monthly rent of £430.00;
  - ii) The Applicant sent a Notice to Leave to the Respondent in terms of Section 50 of the Act;
  - iii) The Respondent gave notice to terminate the tenancy to the Applicant on 18 December 2021;

- iv) The Respondent's notice to terminate came into effect on 18 January 2022 on which date the Respondent vacated the Property;
- v) The tenancy came to an end by operation of Sections 48 and 49 of the Act on 18 January 2022;
- vi) The Respondent did not remove all of her belongings from the Property and did not return the keys of the Property to the Applicant;
- vii) Regardless of Finding in Fact vi) above, the tenancy terminated on 18 January 2022 and the Applicant is entitled to take possession of the Property without further procedure.

#### **Decision and Reasons for Decision**

16. Having found that no Order is required as the tenancy terminated on 18 January 2022, the Tribunal had regard to Rule 17(4) of the Rules which states that the Tribunal "may do anything at a case management discussion .....including making a decision" and so proceeded to refuse the Application and made no order.

#### **Right of Appeal**

**In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.**

# K Moore

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Legal Member/Chair

1 June 2022  
Date